

**REMARKS**

The non-final Office Action mailed November 20, 2003 has been received and reviewed. Claims 1, 2 and 4-21 are pending. Claims 1, 2, 4 and 18-20 are newly rejected in view of new cited references. Claims 5-17 and 21 are allowed. Claims 1, 2, 4 and 18-20 are amended to clarify that which the applicant asserts is his invention. Claim 22 is added. The Applicant submits that the claims are in condition for allowance for the reasons set forth hereinafter.

**Rejection Of Claims 1, 2, 18 and 19 Under 35 U.S.C. § 102(b)**

Claims 1, 2, 18 and 19 are newly rejected under 35 U.S.C. § 102(b) as being anticipated by DE 40 13 693 A1 ("Eisenberg"). The Examiner states that Eisenberg discloses the claimed invention. The rejection is traversed.

As originally filed, but as now further clarified by amendment, claims 1 and 18 require a circumferentially spiraling bracing member that has a proximal terminal end positioned on one side of the joint and a distal terminal end that is positioned on the other side of the joint, an adjustment in the defined circumference between the proximal terminal end and the distal terminal end being the action by which active resistance to axial rotation and translation is effected. Eisenberg fails to teach such structure or function. To the contrary, Eisenberg teaches a strap or webbing [Gurtband] (21) which has but a single terminal end (shown in FIG. 1 near the top band 3) thereby producing a strap that continuously loops from one end (i.e., the proximal end) of the brace, down the leg, and then back up the leg to that same (proximal) end. To the extent that the

strap (21) of Eisenberg may be presumed to have two terminal ends, clearly the two terminal ends are joined and secured together as shown in FIG. 1. FIG. 3 of the Eisenberg publication further illustrates by use of phantom lines how the strap (21) loops continuously about the leg without having distinct terminal ends, and particularly no proximal terminal end positioned on one side of the joint and a distal terminal end positioned on the other side of the joint as required by claims 1 and 18. The webbing (21) of Eisenberg actually spirals bidirectionally down and then back up the leg. Because Eisenberg fails to teach the claimed structure, it is impossible for the Eisenberg device to provide active resistance to axial rotation and translation of the joint as claimed. As fully described in the instant specification, axial rotation is rotational movement (i.e., twisting) about the long axis of, for example, the leg and defines the relative "twisting" movement of, for example, the femur of the upper leg relative to the tibia of the lower leg. It is clear that any adjustment that may be effected by adjustment in the strap (21) of Eisenberg will only effect (i.e., increase) joint compression (i.e., will compress the length between the upper and lower aspects of the joint) and/or limit extension of the lower leg relative to the thigh. In no way does the structure of Eisenberg effect axial rotation of the joint. Therefore, Eisenberg neither anticipates nor obviates claims 1, 2, 18 and 19.

Further with respect to claims 18 and 19 which require a securement structure connected to the first end of the bracing member that is configured to maximize lateral vector forces acting on the first end, Eisenberg fails to teach or suggest any such

structure.

Added claim 22 distinguishes over Eisenberg for the same reason stated above; namely that Eisenberg, at best, teaches a strap (21) that bidirectionally spirals down and then back up the leg resulting in the strap (21) being a merely continuous loop of material that cannot effect limitation of axial rotation and translation in the joint. Therefore, claim 22 is neither anticipated nor obviated by Eisenberg.

For the same reasons stated above, claim 20 recites a method of limiting axial rotation and translation in a joint by means of the claimed structures discussed above. Since Eisenberg fails to teach the required structure, and thereby fails to teach or suggest limitation of axial rotation and translation in a joint, Eisenberg neither anticipates nor obviates claim 20.

Rejection of Claim 4 Under 35 U.S.C. § 103(a)

Claim 4 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Eisenberg in view of U. S. Patent No. 4,941,462 ("Lindberg"). The Examiner states that Eisenberg discloses the claimed invention, except for a sleeve which, the Examiner states, is taught by Lindberg. The Examiner states that it would have been obvious to provide the brace of Eisenberg with the undersleeve of Lindberg. The rejection is traversed. As stated previously, Eisenberg fails to teach a proximal terminal end and distal terminal end positioned, respectively, at the proximal and distal (opposing) sides of a joint. Therefore, even if the undersleeve of Lindberg were employed with the

continuous looping webbing taught by Eisenberg, such combination would fail to obviate claim 4. Further, claim 4 requires that the undersleeve have a proximal edge and a distal edge, and that the proximal (terminal) end of the bracing member be attached near the proximal edge and the distal (terminal) end of the bracing member be attached to the distal edge of the undersleeve. Lindberg, by contrast, teaches connection of encircling straps (5a, 5b and 4a, 4b) to laterally-positioned articulating posts (10), not to the proximal and distal edges of the undersleeve. Therefore, neither Eisenberg nor Lindberg, alone or in combination, obviate claim 4.

Rejection of Claim 20 Under 35 U.S.C. §§ 102(b) or 103(a)

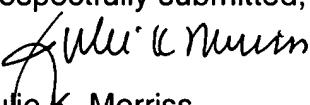
Claim 20 is rejected under 35 U.S.C § 102(b) or 103(a) as being either anticipated or obviated by Eisenberg. The Examiner states that Eisenberg discloses all of the steps of the claim, but that Eisenberg explicitly fails to teach a method for limiting axial rotation and translation in a joint. The Examiner states that the method is inherently practiced by mere usage of the device. The rejection is traversed for the reasons stated hereinabove with respect to the rejection of claim 20 under § 102(b). Eisenberg fails to teach the claimed structure and fails to teach or suggest any structure that can provide limitation of axial rotation and translation as required by claim 20. Therefore, claim 20 is neither anticipated nor obviated by Eisenberg.

**CONCLUSION**

The Applicant submits that the claims present patentable subject matter.

Reconsideration and allowance are requested. Should the Examiner have further questions, particularly regarding the structure and operation of the invention as compared to the device of the Eisenberg and Lindberg references, the Applicant requests that the Examiner contact the undersigned by telephone to discuss the matter further.

Respectfully submitted,



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